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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

COUNTY OF RIVERSIDE, Plaintiff and Respondent, v. WORLD'S BIGGEST DINOSAURS, LLC, Defendant and Appellant.	G050432 (Super. Ct. No. RIC10002445) O P I N I O N

Appeal from a judgment of the Superior Court of Riverside County, Sharon J. Waters, Judge. Affirmed.

Robert S. Lewin for Defendant and Appellant.

Pamela J. Walls, County Counsel, Patricia Munroe and Lisa Traczyk Deputy County Counsel, for Plaintiff and Respondent.

* * *

Defendant World's Biggest Dinosaurs, LLC, appeals from the judgment in plaintiff County of Riverside's favor, which granted plaintiff's request for injunctive relief and ordered defendant to remove and dispose of rubbish, including broken concrete and asphalt. On appeal defendant contends the judgment must be reversed because the judge failed to sign a statement of decision and because insufficient evidence supports the court's finding that the broken concrete and asphalt constituted rubbish within the meaning of the relevant ordinance. We disagree and therefore affirm the judgment.

FACTS

Plaintiff's complaint for injunctive relief and civil penalties alleged, inter alia, defendant had (1) since August 2005, allowed around 46,000 square feet of rubbish to accumulate, including asphalt and concrete, in violation of Riverside County Ordinance No. 541 (Ordinance 541), and (2) thereby maintained a public nuisance in violation of Civil Code sections 3479 and 3480.[1]

The court found "there is accumulated rubbish on the property, specifically, approximately 50,000 square feet of broken concrete and asphalt that constitutes a public nuisance and requires abatement." But the court found plaintiff had not "met its burden of establishing that [defendant] willfully violated the county ordinance and therefore decline[d] to impose any civil penalties."

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[1] The complaint also named four other defendants, but plaintiff dismissed the action as to them without prejudice. Although the complaint originally alleged four causes of action, the court entered judgment in favor of defendant on all claims and then granted plaintiff's motion for a new trial on the causes of action for accumulation of rubbish in violation of Ordinance 541 and public nuisance "to the extent that cause of action is based on accumulated rubbish in violation of county ordinance."

DISCUSSION

Statement of Decision

As a threshold matter, defendant contends the judgment is void and must be reversed because the court failed to sign the statement of decision prior to the filing of the document.

Code of Civil Procedure section 632, however, does *not* require a statement of decision to be signed by the court. "There is no requirement that a statement of decision be signed by the court. However, where the duty of preparation has been delegated to counsel, counsel often includes a space for the judge's signature." (Wegner et al., Cal. Practice Guide: Civil Trials and Evidence (The Rutter Group 2014) [¶] 16:190.7, p. 16-44.) Code of Civil Procedure section 632 provides: "The court shall *issue* a statement of decision . . . upon the request of any party appearing at the trial." (Italics added.) Likewise, California Rules of Court, rule 3.1590, does *not* require a statement of decision to be signed by the court.[2] Thus, the requisite judicial act under both the statute and the rule is the "issuance" of a statement of decision. The verb to "issue" is commonly defined, inter alia, as "to cause to appear or become available by officially putting forth or distributing or granting or proclaiming or promulgating." (Webster's 3d New Internat. Dict. (2002) p. 1201.) While the court's signature on the statement of decision is surely one way, and the easiest way, of "issuing" the statement, it is not the only way. For example, the court may announce a tentative decision *by an oral statement entered in the minutes* (Cal. Rules of Court, rule 3.1590(a), italics added) and "issue" a statement of decision by directing that its tentative decision "will become the statement of decision unless . . . a party specifies those principal controverted issues as to which the party is requesting a statement of decision . . . ." (Cal. Rules of Court, rule 3.1590(c)(4).)

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[2] In contrast, California Rules of Court, rule 3.1590(*l*) requires the court to sign the *judgment*.

The court may also adopt a *proposed* statement of decision prepared by a party by filing and serving an order to that effect, or, as is common, by striking the word "proposed" from the document lodged by counsel and directing the clerk to file and serve a filed, stamped copy. Whichever of several means by which the court chooses to "issue" the statement of decision, the important requirement is that the statement be clearly identified as a statement adopted and published as the court's own statement — not the statement of a party.

Here, plaintiff's counsel included a signature line for the court in the statement of decision, but the court did not sign it prior to the filing of the document. Clearly, however, the court had *approved* the document. In directing plaintiff to prepare the statement of decision, the court had specified the exact language to be included, and had served the parties with the minute orders that specified this language. The statement of decision filed with the clerk contained, without change, the exact language mandated by the court in its tentative decision and in its subsequent direction to counsel, leaving no room to doubt that the expressed basis for the court's decision was the *court's* rationale, not that of counsel. There is no basis for reversing the judgment simply because the document containing the statement of decision was not signed by the court, when it is clear the court had approved the exact language contained in the document, and served the parties with minute orders specifying the exact language to be included in the statement. By any measure, the court had "issued" its statement of decision.[3]

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[3] The court later supplied its own support for our conclusion. In a subsequent minute order, the court confirmed that "the unsigned statement of decision does reflect the Court's determination on all issues presented and . . . failure to actually sign the document was due to either clerical error by court staff failing to deliver the document to the Court for signature before filing it or the failure of this Court to sign the statement of decision." The court's minute order deemed the statement of decision to have been signed and entered in the minutes as of the document's filing date.

Defendant, in its assertion to the contrary, relies on a series of inapt cases. The presence or absence of the judge's signature on written findings of fact or (later) a statement of decision was not a contested issue in *any* of the cases cited by defendant. We briefly address each of these cases.

In *Aspegren & Co. Inc. v. Sherwood, Swan & Co.* (1926) 199 Cal. 532, the trial court had in fact signed and filed findings of fact, conclusions of law, and a judgment. (*Id*. at p. 533.) The issue before the court was whether an appeal could be taken from an *oral* pronouncement of the trial court's disposition, but before the findings, conclusions, and judgment were entered. The case turned on the absence of a *writing* setting forth the court's findings, not on the absence of a signature. When *Aspegren* was decided in 1926, Code of Civil Procedure section 632 provided in relevant part: "Upon the trial of a question of fact by the Court, its decision must be given in writing and filed with the Clerk . . . ." (Stats. 1873-1874, ch. 383, § 79, p. 312.) There was no signature requirement then (or now). The findings merely had to be "given in writing."

In *Reimer v. Firpo* (1949) 94 Cal.App.2d 798, the court had orally pronounced judgment, but never made *any* findings and conclusions, and a final judgment was never entered. The sole issue was whether another judge could do so after the trial judge became unavailable.

Bowen v. Cowett (1963) 216 Cal.App.2d 766 likewise had nothing to do with a purported signature requirement. Findings and conclusions had been waived. The issue concerned whether the court's pronouncement of judgment by minute order triggered the six month limitation on setting aside a judgment under Code of Civil Procedure section 473, or whether the later entry of a formal signed judgment commenced the limitation period. The court held the original minute order constituted the trigger.

In *Stoumen v. Munro* (1963) 219 Cal.App.2d 302, the court decided whether a party could move to reopen the trial after submission of the cause but before findings and conclusions were adopted. There is no discussion in the case regarding the necessity of the court's signature on the findings as contrasted with the simple requirement that the findings be made in writing. In 1963, as in 1926, Code of Civil Procedure section 632 required only that the decision of the court "be given in writing and filed with the clerk . . . ." (Stats. 1959, ch. 637, § 1, p. 2613.)

Easterly v. Cook (1934) 140 Cal.App. 115 likewise never addressed the signature issue. Instead, the court merely held that the denial of a motion to vacate a judgment was harmless because the court had not made the required findings and thus the judgment was deemed not to have been rendered and there was no need to vacate. Although the court often referred to the need for findings which were "signed and filed," the court clarified the requirement by noting that "the findings and decision in the . . . case had not been signed *or* adopted by the court at the time the defendants made their motion . . . ." (*Id.* at p. 124, italics added.) When *Easterly* was decided in 1934, Code of Civil Procedure section 632, like its earlier versions, merely required findings to "be given in writing and filed with the clerk . . . ." (Stats. 1933, ch. 744, § 105, p. 1876.)

Finally, in *Supple v. Luckenbach* (1938) 12 Cal.2d 319, the court "directed plaintiff's counsel to prepare and present appropriate findings of fact and conclusions of law in accordance with the view of the court as expressed in [a] memorandum of decision." (*Id.* at p. 320.) Counsel prepared the findings, but the clerk inadvertently filed the findings before the judge signed them. The subsequent judgment was challenged on appeal. The respondent moved to dismiss the appeal on the ground it was premature since taken prior to the rendition of a valid judgment. The motion was granted. But there is no discussion in the case regarding the necessity of a signature as contrasted with any other method by which the court could give the findings "in writing and filed with the clerk." Unlike the instant case, the trial court in *Supple* had not specified the exact

language to be incorporated in the findings. Thus, with or without a signature, it could not be said that the court had given its findings in writing.[4]

In summary, the courts have often referred to the "signing and filing" of findings of fact and conclusions of law, or, since 1981, to the signing and filing of a statement of decision. But in the context of the cases in which this phraseology has been used, it is apparent that the purported signature requirement is simply a shorthand description of the usual means by which a court adopts and publishes its findings, conclusion, and decision. Since its original enactment in 1872, Code of Civil Procedure section 632 has *never* had a signature requirement. Instead, in earlier days, the statute provided that the decision of the court, in the form of findings and conclusions, "must be given in writing and filed with the clerk," and in modern times that the court "shall issue a statement of decision." So long as the court clearly states the basis for its decision in writing and publishes that statement to the parties, the court has "issued" its statement of decision.[5]

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[4] The only other case cited by defendant, *Santillan v. Roman Catholic Bishop of Fresno* (2012) 202 Cal.App.4th 708, 727-728, mentions *Stoumen v. Munro, supra,* 219 Cal.App.2d 302, 319, discussed above, but *Santillan* merely states that the defendant Diocese relied on *Stoumen* and other cases that did not support the defendant's contention.

[5] Former rule 232(g) of the California Rules of Court did contain a requirement that the court "sign and file its findings, conclusions and judgment." But that version of the rule was only in effect from 1969 to 1982. Thereafter, the rule governing preparation and filing of the modern statement of decision (and the judgment) eliminated the signature requirement on the statement, while retaining the signature requirement for the judgment. (See Historical Notes, 23 pt. 1B West Ann. Court Rules (2006) foll. rule 3.1590 at p. 121.)

Sufficiency of the Evidence

The court found that broken concrete and asphalt constitute "rubbish" as defined in subdivision (g) of section 3 of Ordinance 541 (section 3(g)). Defendant argues there was no evidence to support the court's finding.

Section 3(g) defines "rubbish" as follows: "Including, but is not limited to, any items consisting of trash, . . . waste, junk, debris, discarded items, refuse, construction, landscape or demolition materials, . . . discards, . . . , or other dangerous, nauseous or offensive material of any kind."

Defendant points out that concrete and asphalt are not specifically listed in section 3(g), and argues they are *not* included in the statutory categories of "trash, . . . waste, junk, debris, discarded items, refuse, construction, landscape or demolition materials, discards," or "other dangerous, nauseous or offensive material of any kind." Defendant concludes that broken concrete and asphalt is not rubbish within the meaning of the ordinance.

Contrary to defendant's assertion, broken concrete and asphalt fall within the dictionary definition of several of the statutory terms. "Debris" is defined as "the remains of something broken down or destroyed." (Webster's 3d New Internat. Dict. (2002) p. 582). "Discards" is defined as a "thing cast off." (*Id.* at p. 644.) "Construction" (for purposes of the statutory term "construction materials") is defined as "something built or erected." (*Id.* at p. 489.) "Refuse" is defined as "the worthless or useless part of something," including, "broken fragments of bricks, rocks walls, or buildings." (*Id.* at p. 1910.) The dictionary states that waste, rubbish, trash, debris, and refuse are synonyms, and are comprehensive terms. (*Ibid.*) For example, waste "is also comprehensive; it may indicate that [which is] unused or rejected in one operation but possible for use in another capacity or under different circumstances." (*Ibid.*)

Defendant further argues there was no evidence the broken concrete and asphalt constituted a public nuisance. But section 1 of Ordinance 541 states: "The Board

of Supervisors finds that the unregulated and improper allowance of rubbish . . . poses a danger, not only because it is unsightly and negatively impacts property values, but also because it provides areas for occupation by vermin or wild animals, is a fire hazard and is potentially toxic to persons and the environment. Therefore the accumulation of rubbish is deemed a Public Nuisance and poses a hazard to the safety of landowners, residents in the vicinity, users of public highways and to the public generally." (See *Beck Development Co. v. Southern Pacific Transportation Co.* (1996) 44 Cal.App.4th 1160, 1207 ["where the law expressly declares something to be a nuisance, then no inquiry beyond its existence need be made and in this sense its mere existence is said to be a nuisance per se"].)

DISPOSITION

The judgment is affirmed. Plaintiff is entitled to costs on appeal.

IKOLA, J.

WE CONCUR:

O'LEARY, P. J.

FYBEL, J.